U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 2 1 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks to classify the beneficiary under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences and business. The petitioner is a hospital that seeks to employ the beneficiary as a unit chief in the petitioner's psychiatric unit. At or around the time of filing, the beneficiary was a staff psychiatrist at the petitioning hospital; an assistant clinical professor at and consultation liaison at and a research staff psychiatrist at The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

At the time the petitioner filed the petition, the attorney of record was In this decision, the term "prior counsel" shall refer to and the term "counsel" shall refer to the petitioner's present attorney of record.

On appeal, the petitioner submits a brief and supporting exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree. The record supports that finding. The petitioner claims that the beneficiary is also eligible for classification as an alien of exceptional ability in the sciences. An

additional determination regarding the petitioner's claim of exceptional ability would be moot, because either of the two classifications permits the petitioner to apply for the national interest waiver, and an additional finding of exceptional ability would confer no advantage with regard to the waiver.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on July 30, 2012. In an accompanying statement, prior counsel stated:

> Since September 2001 until [the present, the beneficiary] has been working as a Staff psychiatrist, inpatient consultation liaison and in the emergency room at [the petitioning] Hospital. Simultaneously, [the beneficiary] was requested to work at [redacted] in August 2011 until present, as an assistant clinical professor in the Department of Psychiatry. . . .
>
> [The beneficiary] is one of the few psychiatrist[s] with advanced fellowship training in child psychology, addiction psychiatry and consultation liaison psychiatry. This combination is extremely rare as only seventy (70) individuals train in this area each year. As a result of the shortage, many positions remained unfilled and the mental health of the youth population of the United States [is] not adequately treated.

After asserting that "only seventy (70) individuals train in this area each year," prior counsel claimed that "less than 69" individuals in the United States practice in the beneficiary's specialty. Prior counsel cited no source for the latter statistic. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Even if the petitioner had documented the numbers claimed, such shortages are not grounds for granting the waiver under *NYSDOT*. *See id.* at 218. Section 203(b)(2)(B)(ii) of the Act states that physicians in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals may qualify for the waiver under certain circumstances. USCIS regulations at 8 C.F.R. § 204.12 detail the requirements for such waivers. Among those requirements are:

- Evidence that the intended place of employment is in a geographical area or areas designated by the Secretary of Health and Human Services (HHS) as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area, and in a medical specialty that is within the scope of the Secretary's designation for the geographical area or areas. 8 C.F.R. § 204.12(a)(2)(i).
- A letter (issued and dated within 6 months prior to the date on which the petition is filed) from a Federal agency or from the department of public health (or equivalent) of a State or territory of the United States or the District of Columbia, attesting that the alien physician's work is or will be in the public interest. 8 C.F.R. § 204.12(c)(3).

The petitioner did not submit the evidence required under the regulations cited above. Instead, prior counsel contended that the beneficiary qualifies under *NYSDOT*.

To demonstrate the intrinsic merit of the beneficiary's occupation, prior counsel cited statistics about juvenile drug use, depression, and suicide. Prior counsel then asserted:

> [The beneficiary's] proposed employment is national in scope because the creation of treatment for psychiatric care can be applied on a national scale. [The beneficiary's] employment will lead to new treatments that can benefit people all [over] the United States as it relates to children and adolescent[s] who suffer from a national problem of drug abuse, suicide and other behavioral disorders. His work can be applied on a national scale through development and exchange of ideas, studies, lectures, and case studies.
>
> . . . [The beneficiary participated in a] Behavioral Intervention Team geared toward creating proactive consultations to reduce cost of medical care and improving the quality of treatment for patients that are dually diagnosed with psychiatric or substance abuse problems. [The beneficiary] was exceptional as he had an extremely high productivity in consultations, worked effectively and had outstanding working relationships with multidisciplinary staff. As a result, [the beneficiary] is now in a position to take this innovation to the next stage through lectures, research and teaching. The effect of [the beneficiary's] contribution will enhance the well being of all American's [*sic*] suffering from multiple disorders as he disseminates said information.

Prior counsel did not state that this dissemination had already begun. Rather, prior counsel indicated that the beneficiary "is now in a position" to begin it. Likewise, prior counsel did not claim that the beneficiary's work had already shown national impact. Rather, prior counsel stated that the beneficiary "is recognized and known in three states thus far including His research and contributions have him on a path to lecture nationally as he further develops an area suffering from a shortage of resources."

Regarding the third prong of the *NYSDOT* national interest test, prior counsel stated:

> [The beneficiary's] work is unique and could not be replaced by another individual with minimum qualifications in this area. He is a pioneer in his combinations of specialties that is a newly emerging area in the field of child and adolescent psychology. The reason is that [the beneficiary's] work is at the leading edge of psychiatric research and care. [The beneficiary] has unique training as one of the few psychiatrists with advanced fellowship training in child psychiatry, addiction psychiatry and consultation liaison psychiatry.

Discussing the beneficiary's earlier work, prior counsel stated that the beneficiary "was a cornerstone in the multiple studies done to evaluate the causes of Alzheimer's [disease] to establish new [cost] effective treatments." Alzheimer's disease affects older patients, and the beneficiary undertook this work while employed by The initials stand for ' A "geriatric and adult" patient base would, by

definition, appear to exclude children and adolescents, and yet the beneficiary's claimed specialization with the latter groups forms the principal basis of the waiver claim.

The initial filing of the petition included several witness letters, all from faculty members at various universities where the beneficiary trained. Dr. associate professor at stated that the beneficiary "consistently had very high 360-degree evaluations from his supervisors, peers, and teams," while studying in the school's from 1998 to 2000. Dr. did not mention research or wider impact, instead asserting that there is a shortage of child and adolescent psychiatrists.

Dr. , director of the knew the beneficiary during the beneficiary's fellowship training in 2001-2002 and served as the beneficiary's supervisor in 2011-2012. Dr. s letter may be the source of prior counsel's claim about 70 trainees per year, but the letter does not say what prior counsel claimed. Dr. stated:

> [The beneficiary] has unique training, being one of the few psychiatrists with advanced fellowship training in child psychiatry, addiction psychiatry and consultation liaison psychiatry. . . .
>
> I am writing . . . as the Associate Chair of the Our committee is the national board with the responsibility for training in consultation liaison psychiatry. . . . [T]here is a vast increase in the demand for consultation liaison psychiatrists. Only about 70 individuals train in this area each year in the United States.

The beneficiary's work as a clinician lacks national scope because it benefits a limited number of individual patients under his direct care. Dr. did not claim that the beneficiary's work has produced wider benefits. Rather, he speculated about the future, stating: "I expect [the beneficiary] to contribute not only as a clinician but as a researcher able to advance the field of consultation liaison psychiatry." He did not indicate, however, that the beneficiary was engaged in research at or that the beneficiary had conducted research in consultation liaison psychiatry. Rather, Dr. stated without elaboration that the beneficiary has a "background in research."

assistant chief of psychiatry at stated that, since 2003, the beneficiary "has worked part time as a research staff psychiatrist in supporting the clinical operation of Dr. " Prof. said nothing else about that work, focusing instead on the beneficiary's recent work on

> The cost effective care of comorbid medically and psychiatrically ill patients is a national problem. [The beneficiary] has participated in the ground floor of an innovative program that attempts to solve some of the problems of fragmented care for these patients particularly those in the hospital. He is in a position now to carry forward this

> work in other settings and to improve the dissemination of this knowledge that has been generated here at To the extent that dissemination of this program is effective, the benefits will extend throughout the United States and not be limited to one particular place.

Prof. Sledge's assertions about the dissemination of the program are speculation about future impact.

Dr. director of the emphasized the beneficiary's completion of "three clinical fellowships" as evidence of the beneficiary's talent. Regarding the beneficiary's work at Dr. stated: "Until recently . . . , [the beneficiary] had been working as an attending consulting-liaison psychiatrist at the on the weekends. . . . During the same period, he also had been volunteering as an for Department of "

An unsigned letter attributed to Dr. associate clinical professor at and partner at reads in part:

> I have had the pleasure of working with [the beneficiary] since we first met in 2001. At that time [the beneficiary] was beginning his fellowship on the Psychiatry Consultation Service at . . . I was so impressed with his knowledge, desire to learn and his skill in teaching psychiatry residents and medical student[s], that after the fellowship I hired him to work with me doing clinical research. . . . [M]y practice has conducted numerous research studies on novel medications to treat Alzheimer's disease. [The beneficiary] has participated with me in many of those studies. The research has enabled us to move forward in an attempt to find better medications to treat this devastating illness. [The beneficiary] has been instrumental in this endeavor.

Dr. s letter did not specify the nature or extent of the beneficiary's participation in the studies described. Dr. s accompanying *curriculum vitae* listed two books and 15 articles, none of which identified the beneficiary as a co-author.

The petitioner also submitted a letter from a member of its own staff. Dr. director of the petitioner's Department of Psychiatry, stated that the beneficiary "has served as a staff psychiatrist working on our inpatient unit as well as seeing patients in our Emergency Department and performing psychiatric consultations on the hospital's medical and surgical services." Dr. did not indicate that the beneficiary's employment at the petitioning hospital had included, or in the future would include, research for publication, presentation, or other dissemination to the medical community.

On October 29, 2012, the director issued a request for evidence, instructing the petitioner to submit additional documentation to show the national scope of the beneficiary's work and "that the beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole."

The petitioner's response included an unsigned, unattributed 13-page statement. The use of first-person plural pronouns ("we," "our") indicates that the petitioner, or some unnamed representative thereof, is the source of the statement. The petitioner stated:

> Beneficiary's employment will create new treatments methods [*sic*] through a (See Exhibit A). [T]his innovative shift in treatment consists of multidisciplinary teams of medical professionals that screen patients for behavioral issues as they are admitted to the medical units. As a result of the success, it is now being considered for implementation in a variety of hospitals around the country, including [the petitioning] hospital, for its demonstrated favorable impact on the care of hospitalized medical patients.

The petitioner claimed that the beneficiary's work would produce national benefits because, once the petitioner has implemented its own its staff "can then teach to hospitals across the country and continuously improve on it."

There is no evidence that the beneficiary is responsible for developing the concept of the Rather, Prof. asserted that the beneficiary "did outstanding work for in our innovative and newly established ' Exhibit A, a newsletter from s web site, credited Prof. with developing the and discussed Dr. s work with the program, but did not mention the beneficiary.

The petitioner contended that the beneficiary's familiarity with the program will enable him to help other institutions to adopt it, but the same appears to be true of other psychiatrists at Special or unusual knowledge or training does not inherently establish eligibility for the national interest waiver. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. 221. The record does not say where the concept originated, and therefore the record does not show whether created the concept or was simply among its early adopters.

The petitioner submitted evidence showing the beneficiary's promotion "from provisional to regular staff status" at the petitioning hospital. The petitioner asserted that this change placed the beneficiary "in a position to teach and collaborate with other mental health professions [*sic*] from across the United States to explore, discuss and establish treatment methods." The petitioner did not explain how this administrative change would have that effect. "Regular staff status" at a hospital does not exempt the beneficiary from the statutory job offer requirement.

Furthermore, the record shows that the promotion took place on November 12, 2012, more than three months after the petition's July 30, 2012 filing date. Therefore, even if the promotion inherently qualified the beneficiary for the waiver, it would not establish eligibility at the time of filing. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). The regulation at 8 C.F.R. § 103.2(b)(12) requires that evidence submitted in response to a request for evidence must establish filing eligibility at the time

the benefit request was filed. USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The same reasoning applies to the petitioner's assertion that the beneficiary "will . . . attend international and national conferences" and deliver "lectures, research and course[s]" at the petitioning hospital. There is no evidence that the beneficiary had engaged in such activities prior to the filing date, and the assertion that he will eventually do so cannot retroactively establish eligibility as of the filing date.

The petitioner asserted that the beneficiary's training in three different specialties makes him a particularly valuable practitioner, able to "evaluate a patient from three different imperative angles . . . [i]nstead of a patient seeing three different doctors to evaluate each mental health issues [*sic*]." The petitioner did not explain how this training gives the beneficiary's work national scope.

The petitioner also stated:

> Moreover, as seen in Exhibit G, the number of fellows studying Psychosomatic Medicine totals just 53 and they have all been placed. These fellows are from across the Country and because they are so few, they will inevitably meet and discuss ideas at various psychosomatic conferences. [The beneficiary] is beyond residency and has been practicing for several years. His work and field experience places him in a position to teach. The new fellows are undergoing training and are not qualified to fulfill the position offered to [the beneficiary].

Exhibit G is a printout from the web site of the identifying 53 "physicians who chose to pursue a career in psychosomatic medicine and were accepted for a C-L/PM fellowship training program beginning in July 2012." The record does not show that the Academy's list represents a complete census of all "fellows studying" The assertions that these individuals will gather together, and that the beneficiary will be "in a position to teach" them, appears to be speculative. The petitioner has not shown that the above general assertions distinguish the beneficiary from his peers to an extent that would justify a waiver of the job offer requirement that, by law, normally attaches to the classification that the beneficiary seeks.

The petitioner submits further information about claimed shortages in psychosomatic medicine and in child and adolescent psychiatry. As stated previously, the regulations at 8 C.F.R. § 204.12 provide specific procedures through which a physician may claim a national interest waiver as a result of a shortage. The petitioner has not followed those procedures. It is not sufficient to submit letters and articles referring to a shortage.

With respect to the beneficiary's individual qualifications, the petitioner stated that the beneficiary "has given presentations on Tourette's Syndrome and Psychosomatic illnesses and has been quoted in one of the largest English newspaper [*sic*] in Pakistan and the largest urdu [*sic*] language newspaper " The petitioner submitted a photocopy of a May 7, 2004 article from the "Metropolitan" section of stating that the beneficiary gave "a presentation . . . at the

' where he previously earned his medical degree. The article indicated that the beneficiary had "a vast experience of working in the United States of America." As of May 2004, the beneficiary had just under nine years of experience in the United States, seven of which consisted of training in the form of residencies and fellowships. The article described what appears to have been a presentation on psychosomatic illnesses, rather than a discussion of original research. The article does not establish that the beneficiary has spoken elsewhere on other occasions, has been in demand at universities where he has not personally studied, or has influenced the field through his presentations.

The petitioner did not document the claimed Urdu article in Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The director denied the petition on April 25, 2013. The director acknowledged that the beneficiary's field has substantial intrinsic merit and that research in that field can produce benefits that are national in scope. The director determined, however, that the petitioner had not met the third prong of the *NYSDOT* national interest test.

On appeal, counsel states:

> [T]he decision by the Service ignores evidence in the record and a line of precedent decisions by the AAO. Specifically, [the beneficiary] has been among those professionals who have pioneered a course of treatment known as that results in more intensive, effective treatment of patients over a shorter period of time.

Counsel does not identify the "line of precedent decisions by the AAO." *NYSDOT* is the only precedent decision that directly addresses the national interest waiver. Counsel also states that the beneficiary "received glowing recommendation letters from some of the leaders in the field of psychiatry in the northeastern United States." One of those letters was from Prof. whom the record identifies as the creator of program. Prof. did not state that the beneficiary played any role in the program's development, only that "he did outstanding work" on the team.

In a supplement to the appeal, counsel pointed to "the petitioner's contention that Psychosomatics is an important, emerging field of psychiatric medicine and [the beneficiary's] mentors are pioneers in the field." The director already acknowledged the intrinsic merit of the beneficiary's occupation. There is no blanket waiver for specialists in psychosomatic medicine. The importance of the field does not establish that individual practitioners qualify for the waiver, and assertions of a shortage in the field are relevant only in the context of a specialized waiver application that follows the evidentiary requirements at 8 C.F.R. § 204.12.

Counsel's appellate brief reviews the previously submitted evidence, and repeats previous claims. For instance, counsel asserts that the beneficiary "was a Co-Researcher with Dr. on a leading study of olanzapine as potential treatment for improvement in cognition in patients with Alzheimer's disease" Counsel asserts that the petitioner supported this claim with a "[c]opy of the Alzheimer's study from the " The record contains nothing matching that description, and there is no mention of it in the exhibit lists submitted with the initial filing or in response to the request for evidence. Dr. s *curriculum vitae* identified a 2005 article from the that mentioned in the title, but the entry did not identify the beneficiary as a co-author of that article. The record does not establish what role the beneficiary played in the research.

Counsel states: "Nowhere in *NYSDOT* does it state, 'A petitioner must demonstrate that the beneficiary has a past history of achievement with some degree of influence on the field as a whole' as stated in the examiner's decision." The following passage appears in *NYSDOT*:

> The alien . . . clearly must have established, in some capacity, the ability to serve the national interest to a substantially greater extent than the majority of his or her colleagues. The Service here does not seek a quantified threshold of experience or education, but rather a past history of demonstrable achievement with some degree of influence on the field as a whole.

Id. at 219 n.6.

Counsel contends:

> The psychiatric field itself does not lend itself easily to the empirical data that is typically available in other scientific fields. This is even more so when the contributions come from clinicians rather than researchers. While a cancer researcher may point to numerous authored articles in leading peer review scientific journals and the number of times that article has been cited by other scientists, no such empirical data is available for clinical psychiatrists whose original and influential achievements are accomplished in consultation with patients and other psychiatrists.
>
> That does not make their contributions any less critical. . . . The only criteria then for determining whether an individual is influential in the field of psychosomatic medicine is to determine whether that emerging field is embraced by the profession as a whole then to ask the leading individuals in that field the names and contributions of those individuals who have had an impact in developing that field.

Counsel maintains that the petitioner has done what counsel described, by establishing the emergence of psychosomatic medicine and the method, and by submitting letters from "[t]he two pioneers in this field," specifically Prof. and Dr. These witnesses, however, did not indicate that the beneficiary developed or shaped the method or the practice of psychosomatic

medicine; they indicated only that he is among its early practitioners. The record does not attribute any "original and influential achievements" to the beneficiary. With respect to counsel's claims about publications, the *curricula vitae* of Prof. and Dr. list dozens of published articles.

Counsel has not formulated "the only criteria . . . for determining whether an individual is influential in the field of psychosomatic medicine," and the petitioner has not shown that the beneficiary meets counsel's proposed test. At most, the record shows that the beneficiary has studied and trained under the direction of founding figures in psychosomatic medicine.

The petitioner submits a copy of a February 25, 2012 letter from , offering the beneficiary "the position of On-Call Psychiatrist in our Psychiatric Emergency Room." There is no evidence that the beneficiary accepted the offer, and no evidence that the letter is anything other than a routine job offer letter issued by an employer seeking to fill a vacancy.

In a new letter submitted on appeal, Dr. clinical director of the New York, states: "I . . . have known and worked with [the beneficiary] for the past 7 months. . . . for all intents and purposes, is an underserved area." As previously explained, the petitioner has not properly established a waiver claim based on the beneficiary's intention to work in a medically underserved area, and the newest letter does not meet the applicable requirements. The petitioner has asserted throughout this proceeding that there is a shortage of professionals trained in the beneficiary's specialty. If this is indeed the case, then the labor certification process would be less likely to identify United States workers who would compete for the position. If there is a *bona fide* offer of employment from a United States employer, then a shortage of qualified workers would be a reason for obtaining, rather than waiving, a labor certification.

Dr. states:

> [The beneficiary] brings a great deal of experience to the hospital. With his work in the it is our hope that he will assist us in improving patient care and dramatically reduce costs as a result of reduced LOS [length of stay]. The conflicting demands of increased patient needs and dwindling financial resources make it essential that we have [the beneficiary] at our facility.

The assertion that the beneficiary should receive the waiver in order to work at conflicts with the assertion that it is in the national interest for him to work at the petitioning hospital. There is no evidence of affiliation between the two entities. The record shows that the petitioner is a private Catholic hospital established by the , whereas is a state facility operated by the It is evident that the beneficiary's work would consist mostly, if not entirely, of clinical patient care, which is inherently local in its scope. Significantly, the job offers documented on appeal indicate that employers seek the beneficiary's services as a clinical

practitioner first and foremost, rather than as a teacher, lecturer, or in some other position that would involve developing the specialty and disseminating new findings.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. The waiver is available to physicians in shortage areas only upon meeting certain conditions that the petitioner has not attempted to meet. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.